

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

OP.No. 9019 of 1999(W)

PETITIONER:

**P.RAGHAVAN NAIR,
RETIRED JUNIOR HEALTH INSPECTOR GR-I,
NEDUMBA, VALIYAPOYIL P.O.,
VIA.CHERUVATHUR, KASARGODE DISTRICT.**

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY
TO GOVERNMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.**
- 3. THE DISTRICT MEDICAL OFFICER OF HEALTH, KANHANGAD,
KASARGODE DISTRICT.**
- 4. THE ACCOUNTANT GENERAL, KERALA,
THIRUVANANTHAPURAM.**

BY SR. GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN for R1

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF ORDER NO.E5.69789/64/DHS DTD. 13TH MAY, 1966 OF THE 2ND RESPONDENT ALONG WITH THE RELEVANT EXTRACT OF THE LIST.
- EXT.P2: COPY OF ORDER NO.E2.11995/66 DTD. 23/05/1966 OF THE DMOH, KANNUR.
- EXT.P3: COPY OF ORDER NO.E3-23786/81/DHS DTD. 18/03/1982 OF THE 2ND RESPONDENT ALONG WITH THE RELEVANT EXTRACT OF THE LIST.
- EXT.P4: COPY OF ORDER NO.EB3 (K.DIS.) 128416/89/DHS. DTD.8/12/1989 OF THE 2ND RESPONDENT.
- EXT.P5: COPY OF COMMUNICATION NO.A2-9999/91 DTD. 19/08/1991 ISSUED BY THE 3RD RESPONDENT.
- EXT.P6: COPY OF ORDER NO.K.DIS. EB3/87076/91/DHS DTD. 24/09/1991 ISSUED BY THE 2ND RESPONDENT.
- EXT.P7: COPY OF REPRESENTATION DTD. 15/09/1992 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
- EXT.P8: COPY OF COMMUNICATION NO.OA.11/1/12-234/92/93/282. DTD. 14/05/1993 ISSUED BY THE ACCOUNTANT GENERAL.
- EXT.P9: COPY OF REPRESENTATION DTD. 23/12/1994 FILED BY THE PETITIONER BEFORE THE GOVT.
- EXT.P10: COPY OF COMMUNICATION NO.EB3-124532/94/DHS DTD. 5/05/1995 ISSUED BY THE 2ND RESPONDENT.
- EXT.P11: COPY OF LETTER NO.2198/H2/92/H&FWD DTD.23/03/1993 ISSUED BY THE GOVT.
- EXT.P12: COPY OF COMMUNICATION NO.OA 2/I/12-234/92-93/1236 DTD. 27/10/92 ISSUED BY THE ACCOUNTANT GENERAL.
- EXT.P13: COPY OF REPRESENTATION DTD. 15/06/1995 FILED BY THE PETITIONER BEFORE THE GOVT.

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- EXT.P14: COPY OF ORDER ON.EG3-4402/95/DHS. DTD. 9/03/1998
ISSUED BY THE 2ND RESPONDENT.**
- EXT.P15: COPY OF REPRESENTATION DTD. 20/03/1998 FILED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT.**
- EXT.P16: COPY OF ORDER NO.EG3-4402/95/DHS. DTD. 4/06/1998
ISSUED BY THE 2ND RESPONDENT.**
- EXT.P17: COPY OF REPRESENTATION DTD.22/08/1998 FILED BY THE
PETITIONER BEFORE THE GOVT.**
- EXT.P18: COPY OF REPRESENTATION DTD. 14/09/1998 FILED BY THE
PETITIONER BEFORE THE GOVT.**
- EXT.P19; COPY OF ORDER NO.49454/C2/98/H&FWD DTD. 20/11/1998
ISSUED BY THE GOVT.**
- EXT.P20: COPY OF ORDER NO.K.DIS(EB3) 77613/91/DHS DTD.
07/08/1991 ISSUED BY THE 2ND RESPONDENT.**

/TRUE COPY/

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S.SIRI JAGAN, J.

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Dated this the 5th day of March, 2007

J U D G M E N T

The petitioner was appointed as Enumerator-cum-Vaccinator in the National Small Pox Eradication Programme on 1.8.1962. He continued in that post till 31.3.1966. That appointment was on a consolidated pay of Rs.100/-. He was retrenched from service on 31.3.1966. Thereafter, the petitioner got provisional appointment as Basic Health Worker in the scale of pay of Rs.80-160 by Ext.P1 order. Accordingly, he was posted as Basic Health Worker at P.H.Centre, Pappinissery by Ext.P2 order dated 23.5.1966, pursuant to which he joined service. The break in service of the petitioner from 1.4.1966 to 26.5.1966 was condoned by the Government as per G.O(Ms).No.446/76/HD dated 17.12.1976 based on G.O(Ms).No.267/70/HD dated 25.7.1970. Taking into account the service of the

petitioner from 27.5.1966, he was given 13 years' higher grade with effect from 1.7.1979 by Ext.P3 order. By Ext.P4 order, he was given 20 years' higher grade with effect from 27.5.1986. Subsequently, he was also given 25 years' higher grade by Ext.P6 order dated 24.9.1991. In respect of his fixation of 20 years' and 25 years' higher grades, the Accountant General had, by Ext.P7, raised objections, which was later dropped by Ext.P12. The petitioner thereafter retired from service on 31.7.1993. By Ext.P14 order dated 9.3.1998, the Director of Health Services refixed his 13 years' higher grade and 20 years' higher grade without reckoning his contingency service on the ground that the contingency service cannot be reckoned for increment and on that basis, sought recovery of the excess amount paid to the petitioner on account of the alleged wrong fixation of higher grades. The petitioner's representation against Ext.P14 fixation has been rejected by Ext.P16. By Ext.P19, the Government also rejected

his representation and confirmed the re-fixation of his higher grades on attaining 13 and 20 years of service. Exts.P14, P16 and P19 are under challenge in this original petition.

2. The contention of the petitioner is based on Rule 3C of Part III of KSR, which stipulates that recovery of excess payments made to an officer by mistake within a period of four years before his retirement and which are detected within a period of four years after retirement can only be recovered from his pension and other amounts due to him after retirement. The petitioner submits that his higher grade was granted way back in 1970s much prior to the four years before his retirement mentioned in Rule 3C of Part III of KSR. Ext.P14 order has been passed only on 9.3.1998 more than four years after his retirement. The petitioner's contention is that on either side of his retirement, the limitation provided under Rule 3C squarely applies and therefore, the respondents could not have by Exts.P14, P16 and P19 recovered

amounts paid to him, even if the same is paid under mistake. The petitioner also refers to a decision of the learned Single Judge of this court in Shamsuddhin v. State of Kerala reported in 2004 (2) KLT 1020, whereby it has been held that excess payment referred to in Rule 3C should be one made during the period of four years prior to his retirement and it is not sufficient that the excess payment is deducted within four years of retirement.

3. I have heard the learned counsel for the petitioner as also the learned Government Pleader.

4. It is not disputed that the petitioner retired from service on 31.7.1993. Ext.P14 order has been passed only on 9.3.1998. The first proceedings in this regard referred to in Ext.P14 itself is dated 17.1.1998. Even that proceedings are after four years of his retirement. His fixation of 13 years' and 20 years' higher grades was way back in 1970s and therefore, on either side of his retirement, the limitation under Rule

3C of Part III of KSR squarely applies. I am also in perfect agreement with the learned Single Judge in Shamsuddhin's case (supra). That being so, Exts.P14, P16 and P19 have been issued in clear violation of Rule 3C of Part III KSR and therefore, are liable to be quashed. I do so. I declare that no amounts shall be recovered from the petitioner on account of any alleged wrong fixation of his higher grades as sought to be done by the respondents as alleged in the original petition.

Original petition is disposed of as above.

Interlocutory applications stand closed.

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S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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J U D G M E N T

5th March, 2007